

REMARKS

(1) Claims 18-23 and 29-43 are pending in the present application. Claims 1-17 and 24-18 have been previously canceled.

(2) The Office Action cited the following references:

A. U. S. Patent 5,279,841, by Yu, entitled *Dual Container Connecting Ring And The Combination Thereof* (referred to as "Yu" hereinafter); and

B. U. S. Patent 4,830,273, by Kalberer, *et al.*, entitled *Plastic Pour Spout Bonding* (referred to as "Kalberer" hereinafter).

(3) The Office Action rejected claims 18-43 under 35 U.S.C. § 103(a) as being assertedly unpatentable over Yu in view of Kalberer. Claims 24-28 were cancelled in the Preliminary Amendment. Applicant respectfully submits that claims 18-23 and 29-43 are patentable over Yu in view of Kalberer for the following reasons.

Regarding obviousness, MPEP 2143 (8th ed., rev. 2, May 2004) states:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

With respect to the third criterion, *all* the claim limitations must be taught or suggested by the prior art.

Claims 18-23 and 29-43

Although the scope of claims 18-23 and 29-43 differ, a same argument may be made to overcome the obviousness rejections. Independent claim 18 includes, for example, a step of "forming a second opening having a moveable seal on a side of said second compartment and proximate a bottom of said second compartment." Independent claim 29 includes, for example, a step of "forming a second section having a second compartment and having a second opening on

a side of said second compartment and proximate to a bottom of said second compartment to provide access to an interior of said second compartment.” And, independent claim 36 includes, for example, a limitation of “said second section having a second opening having a moveable seal on a side of said second compartment and proximate to a bottom of said second compartment.”

The Office Action stated, “Yu does not specifically disclose the seal on the second section being placed on the side or the lid being resealable.” The Office Action asserts that it would be obvious in view of Kalberer “to modify Yu by making the seal on the second section on the side of the section.” However, a careful review of Kalberer reveals that Kalberer discloses a seal on an upper surface of a gable top carton or flat top carton. Kalberer does not teach or suggest an opening on a *side* of a compartment and *proximate a bottom* of the compartment, nor does Yu. As taught by the present invention, an opening on a side of a compartment enables better control for dispensing a product and spillage control of both product and product debris. *See, e.g.*, Specification, page 10, lines 9-22. Also, a first opening on a top of the container for a first compartment combined with a second opening on a side of a second compartment enables food products to be accessible from both compartments at the same time. *See, e.g.*, Specification, page 10, line 27 to page 11, line 23. Accordingly, claims 18, 29, and 36 are patentable over Yu in view of Kalberer.

Claims 19-23 depend from claim 18, claims 30-35 depend from claim 29, and claims 37-43 depend from claim 36. Without conceding that Examiner’s assertions are valid with respect to the limitations of the rejected dependent claims, Applicant respectfully submits that claims 19-23, 30-35, and 37-43 are patentable over the cited prior art, not only because of their dependency from claims 18, 29, and 36, respectfully, for the reasons discussed above, but also in view of their novel and non-obvious claim features.

If the rejections of claims 18-23 and 29-43 should be maintained, it is respectfully requested that the Patent Office point out with particularity how and where Yu and/or Kalberer, either singularly or combined, discloses *all* of the required limitations of claims 18-23 and 29-43. In the absence of a *prima facie* showing of obviousness by the Patent Office, Applicant submits that claims 18-23 and 29-43 should now be allowed.

(4) In view of the above, Applicant respectfully submits that the application is in condition for allowance and requests that the case be passed to issuance. If the Examiner should have any questions, Applicant requests that the Examiner contact Applicant's attorney at the address below. No fee is believed due in connection with this filing. However, in the event that there are any fees due, please charge the same, or credit any overpayment, to Deposit Account No. 50-1065.

Respectfully submitted,

3/3/05
Date

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